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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

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APR 30 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

)

MM DOCKET NO. 93-107

2.

By Hearing Designation Order, DA93-423 (released April 15, 1993), the Assistant Chief, Audio Services Division, Mass Media Bureau, specified the following issue:

To determine whether there is a reasonable possibility that the tower height and location proposed by WBC would constitute a hazard to air navigation.

WCB, however, has received the Federal Aviation Administration's formal determination that its proposed tower will not constitute a hazard to air navigation. See Attachment A hereto.

Section 17.4(d) of the Commission's Rules states that:

Whenever a "no hazard determination" is received from the FAA concerning any proposed antenna structure, the antenna structure is deemed not to involve a hazard to air navigation and the antenna aspect of the application for radio station authorization will be processed accordingly; provided that the FAA "no hazard determination" has not expired.

The FAA "no hazard determination" with regard to WBC's application is to expire on December 31, 1992 unless "application for a construction permit is made to the FCC on or before" that date. Of course, WBC already had filed its application for a construction permit. Thus, the "no hazard determination" will not expire.

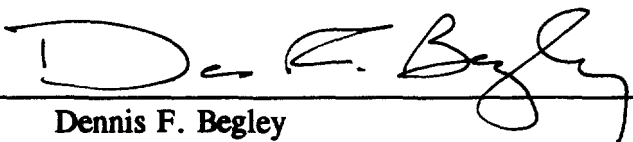
Summary decision should be granted on the air navigation hazard issue specified against WBC's application. The attached form evidencing the FAA's "no hazard determination" precludes the need for further inquiry into the air hazard issue with respect to WBC's application. According to Section 17.4(d) of the Commission's Rules, the FAA's determination is conclusive. See Southern Capital Television, Inc., 45 FCC 2d 197, 29 RR 2d 511 (1974); Adirondak Television Corp., 5 FCC 2d 172, 8 RR 2d 784 (Rev. Bd. 1966). Therefore, no

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genuine issue as to a material fact remains as to whether WBC's proposed tower height and location would constitute a hazard to air navigation.

WHEREFORE, THESE PREMISES CONSIDERED, this Motion for Summary Decision should be GRANTED and Issue 1 should be RESOLVED in WBC's favor.

**WESTERVILLE BROADCASTING COMPANY
LIMITED PARTNERSHIP**

By 
Dennis F. Begley
Matthew H. McCormick

Its Counsel

Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20036

April 30, 1993

FEDERAL AVIATION ADMINISTRATION
Great Lakes Region, AEL-530
2300 East Bowen Avenue
Des Plaines, IL 60018

In Reply Refer To
AERONAUTICAL STUDY NO.
92-AEL-0015-OE

ACKNOWLEDGMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

PROPOSER:
Freeman Edwards
Westerville Broadcasting Co.
A Limited Partnership
5412 Flintrock Court
Westerville OH 43081

CONSTRUCTION LOCATION:
Johnstown, OH

LATITUDE : 40-11-33.
LONGITUDE: 082-45-07.

	AGL	AMSL
HEIGHT:	318. ft	1627. ft

CONSTRUCTION PROPOSED: Three-Bay FM Antenna Side-Mounted on Guyed Tower
FREQUENCY: 103.9 MHz
EFFECTIVE RADIATED POWER (ERP): 6.0 kW

The Federal Aviation Administration acknowledges receipt of notice dated 12/23/91, concerning the proposed construction or alteration described above.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

The proposed construction is not identified as an obstruction under any standard of FAR, Part 77, Subpart C and would not be a hazard to air navigation.

The structure should be obstruction marked and lighted per FAA Advisory Circular AC 70/7460-1, "Obstruction Marking and Lighting", Chapters 3, 4, 5 & 13.

Supplemental notice is required at least 0 hours before the start of construction and within 5 days after construction reaches its greatest height (Use enclosed FAA Form 7460-2).

This determination expires on 12/31/92 unless:

- (a) extended, revised or terminated by the issuing office;
- (b) the construction is subject to the licensing authority of the Federal Communications Commission and an application for a construction permit is made to the FCC on or before the above expiration date. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or on the date the FCC denies the application.

NOTE: Any request for extension of the effective period of this determination must be postmarked or delivered to the issuing office at least 15 days prior to the expiration date.

If the structure is subject to the licensing authority of the FCC, a copy of this acknowledgement will be sent to that Agency.

>>>> NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED <<<<

Remarks:

Study included sponsor's letter with assurance of electromagnetic interference (EMI) attenuation dated June 19, 1992. This notice supersedes the ACKNOWLEDGMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION DATED January 29, 1992 and revised the determination.

Original Signed by
Thomas C. Johnson

Signed: Douglas F. Powers
Manager, System Management Branch

Issued In: Des Plaines, Illinois
On: 06/25/92

CERTIFICATE OF SERVICE

I, Pamela R. McKethan, hereby certify that on this 30th day of April, 1993, copies of the foregoing **MOTION FOR SUMMARY DECISION** were hand delivered and mailed, first class, postage prepaid, to the following:

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